

(2012) 11 DEL CK 0271
In the Delhi High Court
Case No : Co. Petition 249 of 2012

EMC IT Solutions India Pvt. Ltd.	Vs	APPELLANT
M/s EMC Data Storage Systems (India) Private Limited and Bagmane Constructions Pvt. Ltd.		RESPONDENT

Date of Decision : 29-11-2012

Acts Referred:

Companies Act, 1956 — Section 235, 236, 237, 238, 239

Citation : (2012) 11 DEL CK 0271

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : P. Nagesh and Mr. Anand K. Ganesan, for the Appellant; Atma Sah, Astd. ROC on behalf of Regional Director (NR), for the Respondent

Final Decision : Allowed

Judgement

Indermeet Kaur, J.—This Petition has been filed under Sections 391 to 394 of the Companies Act, 1956, (for short "Act") in connection with the Scheme of Arrangement and de-merger (for short "Scheme") between EMC Data Storage Systems (India) Private Limited (hereinafter referred to as the "Transferor Company"), of which the Marketing Support Services Division is to be demerged and vested in the EMC IT Solutions India Private Limited (hereinafter referred to as the "Transferee/Applicant Company"). A copy of the Scheme is filed along with the application as Exhibit-E. The registered office of the Petitioner/Transferee Company is situated within the National Capital Territory of Delhi and is within the jurisdiction of this Court. The registered office of the Transferor Company is located in Bangalore, Karnataka.

2. Details with regard to the date of incorporation of Petitioner Company, its authorized, issued, subscribed and paid up capital have been given in the Petition.

3. Copies of the Memorandum and Articles of Association of the Petitioner Company have also been enclosed with the Petition.

4. The proposed Scheme has been approved by the Board of Directors of the Petitioner Company. Copy of the Board Resolution has been filed along with the Petition.

5. The learned counsel for the Petitioner submits that if the Scheme of Arrangement and De-merger is sanctioned by this Court, it would enable the Transferee Company to provide for a separate dedicated management of the Marketing Support Services Division, which will lead to a more focused approach and will provide greater flexibility to the respective entities, to meet the need for carrying out its operations, which would be in the best interests of the Transferor and Transferee Companies, its shareholders, creditors and all persons connected to the companies. It is further submitted that the proposed Scheme will provide scope for independent collaboration and expansion without committing the existing organization in its entirety. The Appointed Date for the Scheme is 1.4.2011.

6. The Scheme provides for the employees of the Transferor Company being absorbed in the Transferee Company with continuity of service and on the same terms and conditions as applicable immediately prior to the transfer and without any break or interruption in service.

7. The learned counsel submits that no proceedings under Sections 235 to 251 of the Act are pending against the Petitioner company.

8. The learned counsel for the Petitioner submits that the High Court of Karnataka has by order dated 18.4.2012 passed in Company Petition No. 27 of 2012 approved the Scheme of Arrangement and De-merger, subject to the approval to be granted by this Court.

9. This Court by Order dated 25.4.2012 passed in Company Application (Main) No. 35 of 2012 had dispensed with the meetings of the secured creditors, unsecured creditors and the shareholders of the Petitioner Company to consider and approve the scheme of Arrangement and De-merger.

10. Upon the present second motion being filed, vide order dated 1.6.2012 this Court had issued notice to the Regional Director, Northern Region. Citations were also directed to be published in the "The Business Standard (English) and "Nav Bharat Times" (Hindi) in terms of the Company (Court) Rules, 1959.

11. Affidavit has been filed by the Petitioner for the publication of Citations in "The Business Standard" (English Edition) on 12.7.2012 and in "Nav Bharat Times" (Hindi Edition) on 13.7.2012. An affidavit has also been filed stating that in pursuance to the publication carried out in the newspapers, neither the Petitioner Company nor the counsel of the Petitioner Company has received any objection from any person to the Scheme for which sanction has been sought from this Court.

12. The Regional Director in its report filed with this Court has also confirmed on the terms relating to the employees. The Regional Director has not raised any

objection to the Schemes of Arrangement and De-merger proposed by the Petitioner company except to observe that the valuation and share exchange ratio adopted by the Chartered Accountants of the Petitioner Company is against the normal accepted valuation method adopted.

13. In reply to the above observation, the Petitioner has filed an affidavit wherein it has been stated that share exchange ratio was settled by the Transferee and Transferor Companies in view of the nature of the transaction and the undertaking transferred in marketing without any immovable properties. It is stated that the above does not affect the valuation of the shares as the value is being held by the same set of controlling shareholders and both the Transferor and Transferee Companies would be controlled by the same parent company. It is stated that there is no transfer of right, title or interest in any immovable property to any third party and there is no attempt to indirectly transfer any rights through the Scheme of de-merger and therefore the apprehension of the Regional Director is not justified. It is stated that the Chartered Accountant has certified that the share exchange ratio is fair and not prejudicial to any of the Shareholders of the Transferor or Transferee Companies.

14. In view of the above submissions on behalf of the Petitioner Company, the observations of the Regional Director do not survive. Upon perusal of the Schemes, this Court is also of the opinion that the said Scheme appears to be fair and reasonable.

15. Consequently, sanction is hereby granted to the Scheme of Arrangement and De-merger u/s 391 and 394 of the Companies Act, 1956. The Petitioner shall comply with the statutory requirements in accordance with law. It is, however, clarified that this order will not be construed as an order granting exemption from payment of stamp duty or tax, if payable.

16. Learned Counsel for the Petitioners states that the Petitioner Companies would voluntarily deposit a sum of Rs. One lac in the Common Pool fund of the Official Liquidator within three weeks from today. The statement is accepted. The petition is allowed in the above terms.